to allow the Government of India to exercise more direct control over frontier questions, and partly to relieve the Government of the Punjab. * To them also were added a number of adjoining border tracts, over which direct influence had been exercised by the Government of India since 1892. British Baluchistan was formed into a Chief Commissionership in 1877. Coorg, conquered and annexed in 1829, is administered by the Resident of Mysore, who is also the Chief Commissioner of Coorg. So also the small British territory of Ajmere-Merwara in Rajputana, which is administered by the Agent to the Governor-General in Rajputana, being also Chief Commissioner of Ajmere. Finally, in 1912, the district of Delhi, with a territory round about it, was detached from the Punjab (to which it had been annexed after the Mutiny) and was made into a Commissionership under the immediate charge of the Government of India, who since that date have made it their capital.

II. Procedure to Create new Provinces.

The power of the Governor-General, by notification in the Gazette, and subject to the approval of the Secretary of State for India in Council, to take any part of British India under the direct authority of the Government of India, was questioned by Sir Barnes Peacock in 1852. It was therefore expressly granted by s. 3 of the Act of 1853 ; and has been embodied in s. 60 of the present Act. This power has been frequently used, *e.g.* in the case of Arracan, originally annexed to Lower Burma, taken under this authority directly under the Government of India, and annexed to British Burma in 1862, by notification. So also the Province of Assam. On the other hand in creating the Chief Commissionerships of Oudh, Central Provinces, and British Burma the procedure followed was the issue of a reso-

*The question of regrouping these areas is once again under consideration at the present time (1923).

lution, reciting the reasons for such a creation, defining the territories included in it, and specifying the staff appointed, without making any reference to any Statute. The reason for this difference in procedure is that the Government of India do not consider the section of the Act of 1858 to apply to territories already included in a Chief Commissionership, for a Chief Commissionership is already under the direct management of the Government of India. A Chief Commissioner merely administers the territory under his charge on behalf of the Governor-General in Council, and the latter does not divest himself of any of his powers in making over the administration to a Chief Commissioner. The Chief Commissioner, however, is according to Act X of 1897, s. 3 (29), a local Government, and is so considered by the present Act.*

The power to alter the boundaries of the existing provinces, by notification in the Gazette, was given by the Charter Act of 1833, s. 38. It is subject to the reservation that (*a*) an entire district may not be transferred from one to another province, without the previous consent of the Crown through the Secretary of State in Council; and (*b*) that any such notification may be disallowed by the Secretary of State. In 1878 the Government of India were advised that the Act of 1865, by which this power was first modified, enabled the Governor-General in Council to transfer territory from a Chief Commissionership to a Presidency or a Lieutenant-Governorship, but not vice versa. Both these powers are subject to the proviso that no law or regulation in force at the time of the transfer shall be altered or repealed except by law made by the Governor-General in Council.

*The most important of these Chief Commissionerships have, however, been now made into Governor's provinces.

III. The relative Status of the Provincial Governments.

The provinces, as we have seen, are divided into Governorships, Lieutenant-Governorships, and Chief Commissionerships. This division does not by any means suggest a great difference in the powers and position enjoyed by each of these classes of provinces. For all practical purposes within his own jurisdiction each head of a Provincial Government, whether a Governor, a Lieutenant-Governor, or a Chief Commissioner enjoys very nearly the same independence and authority. In fact one might even say that the more dignified position of the Governor carries with it less actual powers,—the powers of government being shared by the Governor with his council, while the old type of Lieutenant-Governorship gave more substantial powers. Nevertheless there is some difference in the relative rank and position of each of these provinces. The difference is important because it points to the old historic distinction, because it has some practical importance even to-day, and because it throws some curious light on the question of Provincial autonomy.

IV. The Presidency Governors.

The three governorships of Madras, Bombay and Bengal have a certain superiority over all the other provinces. Not only that they are historically the oldest provinces, existing even before the Central Government itself came into existence; but this prior existence of theirs and the independent position they enjoyed at the time, is reflected even to-day in the position of their chief authorities in their relations with the Government of India. Each of these provinces is governed by a

Governor in Council on the model of the Government of India. Their Governor, like the Viceroy, is appointed directly from England by the Crown.* He is usually a person of some importance in the social or political life of England. Like the Viceroy, the Governor is styled His Excellency; and was *virtute officii*, an extraordinary member of the Viceregal Executive Council whenever that Council assembles within the jurisdiction of his Presidency. The extraordinary membership in the Viceroy's Executive Council is now abolished by the Act of 1919. His Council, like the Council of the Governor-General, is appointed to advise and assist him in the task of administration. He has the same powers of overruling the council as the Governor-General has, in cases of emergency. The Governors have still the right of communicating directly with the Secretary of State; and also to appeal to the Secretary of State against the Government of India in cases where they differ from the Government of India, provided the appeal is transmitted to and communicated through the Government of India.† They are more independent, besides, than the other governments in such matters as their revenue settlement, or the choice of persons to certain important posts, like the nominated members of the Legislative Council for instance. Altogether their position, even to-day, contains some traces of their original equality with, and independence of, one another: but these are fast disappearing.

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*While those of the other provinces, now made Governor's Provinces, are appointed by His Majesty in consultation with the Governor-General. [s. 46 (2)]. This in practice means that the governors of the other provinces may be ordinary civilians, while those of the Presidencies are independent English gentlemen.

†S. 11 of the present Act replaces the old ss. 11-14 which related to the conduct of correspondence to and from the Secretary of State and the various governments in India. It is not quite clear how this old privilege of the Presidency governors stands at the present time; but presumably under the new dispensation all the governors are made of equal status, and as such the old privilege has ceased to exist, as an exclusive privilege of the Presidency governors.

V. Lieutenant-Governors.

As, with the exception of Burma, all the old Lieutenant-Governorships have been turned, by the Act of 1919, into Governorships, the distinction between these two classes of governing authorities has lost all importance in practice. Before 1919, the Lieutenant-Governor, usually a promoted civilian towards the fag end of his career, used to be the absolute head of his province, subject only to the Governor-General in Council. An experiment was made with an executive Council for the Lieutenant-Governorship of Bihar and Orissa in 1912 ; and power was taken in the Government of India Act of 1915 to enable the Governor-General to establish executive Councils in any of the Lieutenant-Governorships by a proclamation, provided the draft proclamation had been laid before both Houses of Parliament 60 days before its coming into operation. Lord Harding's attempt, however, having met with an undeserved opposition in the House of Lords, the Act of 1919 has universalised the Council form of government in all the Governors' provinces. It is, accordingly, unnecessary to trace at length the differences between the Governorships and Lieutenant-Governorships, or to estimate the relative advantages of the Council form of government as against the absolutely proconsular government.

By s. 52A of the present Act, the Governor General in Council is authorised, with the sanction of His Majesty previously signified by the Secretary of State, to constitute a new Governor's province, and place part of a Governor's province under a deputy-governor. In so far as statutory provisions relating to Lieutenant-Governorships are concerned, that officer is appointed by the Governor-General with the approval of His Majesty, and must have been for 10 years in the service of the Crown in India at the time of his appointment. He may be assisted in his administration by an Executive Council, created

by a notification of the Governor General approved by the Secretary of State, and provided that the draft notification had been submitted to Parliament for 60 days before its coming into operation, and that no address against such a notification is presented within that period by either House to the King-Emperor.

VI. Chief Commissioners.

Next in authority to the Lieutenant-Governors are the Chief Commissioners. The title of the Chief Commissioner was adopted to distinguish the head of the administration in a minor province from the financial and judicial commissioners. It was first introduced in 1853, when John Lawrence was appointed Chief Commissioner in the Punjab and Baluchistan. The Chief Commissioners stand on a lower footing than the Lieutenant-Governors. There are 6 Chief Commissionerships those of the North-West Frontier Province, British Baluchistan, the new province of Delhi, Ajmere-Merwara, Coorg, and Andaman and Nicobar Islands. The appointment of the Chief Commissioner is not, unlike that of the Lieutenant-Governors, specifically provided for by a special Act of Parliament. The territories under their charge are, under the theory of the law, under the immediate authority and management of the Governor-General in Council, who appoints Chief Commissioners at his discretion, and delegates to them such powers as are necessary for the purpose of administration.* The Chief Commissioners of the North West Frontier Province and of British Baluchistan are officers administering territories of less magnitude. They are at the same time agents to the Governor-General for dealing with the tribes and territories outside British India. The chief commissionership of Delhi has a special importance of its own on account of Delhi city

*See s. 59 of the present act.

being made the capital of India. British territories in Ajmere-Merwara and Coorg are governed by the agent to the Governor General-in Rajputana and the Resident in Mysore respectively.

VIII. Principles of Provincial administration in India.

The Governor-General in Council is responsible for the entire administration of British India and for the control exercised in varying degrees over the Native States. The Local Governments must obey the orders received from the Governor-General-in Council, and they must communicate to him their own proceedings. This subordination is derived partly from Acts of Parliament, partly from the terms of the delegation of authority by the Governor-General to Lieutenant-Governors and Chief Commissioners. Every local government including a Chief Commissioner, is the executive head of the administration within the province ; and though there are minor differences in the relative status of the different local governments *inter se*, they are all alike in this : that they are all the delegates, or at least the subordinates, of the Supreme Government of India represented by the Governor-General in-Council.

The actual work of administration is divided between the Government of India and the local Governments on the following principles. All matters of Imperial importance or matters which concern more than one province, are controlled by the Government of India exclusively, as also matters having relation to concerns outside British-India. On the other hand matters requiring local knowledge and experience for efficient administration are left to the Provincial Governments. Thus the Supreme Government retains in its own hands all matters relating to (1) foreign relations, (2) the defence of the country, (3) general taxation, (4) currency, (5) public debt, (6) tariffs, (7) post office and telegraphs, and (8) railways. On the other hand ordinary internal administration, assessment and collection,

of revenue from land, education, medical and sanitary arrangements, irrigation and public buildings, fall to the share of the Provincial Governments. **But in all these matters formerly the Government of India used to exercise a general and constant control in different ways.** 1) The most important method of supervising and controlling the working of every provincial administration was the financial power of the Government of India. Not only did they habitually receive, and, if necessary, modify, the annual budgets of all local governments; not only were they the common banker for every province; but every new appointment of importance, every large addition, even to minor establishments, had to receive their specific sanction, so that no new departure in administration could be undertaken without their previous approval.* (2) The Government of India had also laid down lines of general policy for carrying on the work of different departments under the control of the Provincial Governments; and it found out how far these principles had been carried out by the annual administration reports of the main departments under the local governments submitted to the Supreme Government. With the growth of the provincial autonomy, since 1919, this power must be very considerably modified. (3) In the departments for which it was itself directly responsible, the Government of India had and still has controlling officers for those departments in the different provinces. (4) In the departments which were primarily left to the local Governments, such as agriculture, irrigation, medical, education, and archeology, the Government of India employed a number of inspecting or advising officers. Those Inspectors-General frequently examined the working of the department to which they were attached in the different provinces and reported to the Government of India the result of their inspection. This method is now quite unimportant. (5) Besides all these a wide field of appeal to the Government of India was and is still given to officials and private individuals who may have any

* For changes in the financial powers of the provincial governments under the new regime, see the chapter on Indian Finance.

cause of complaint, against any particular local Government. (6) Outside the major provinces of Madras, Bombay and probably Bengal, appointments made to the most important posts under the provincial Governments were subject to the approval of the Governor-General. (7) In matters of legislation every proposed provincial legislation was subject to the preliminary scrutiny of the Government of India; and when passed by the local Government it had also to receive the assent of the Governor-General before it could become valid. (8) Specific instructions were also issued to particular local Governments in regard to matters which may have attracted the attention of the Government of India, whether from the departmental administration reports, or from the reports of the proceedings of a local Government submitted to the Imperial Government, which must now fall increasingly into disuetude.

VIII. Changes made by the Reforms of 1919.

The Act of 1919 has made the most considerable changes in the constitution of the provincial governments in India. The Joint Report on the Indian constitutional Reforms had laid down :—

"The provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities."*

This intention was attempted to be realised by the creation, in the act of 1919, of a duality of authority in the executive government of a province. One half of this dual authority was to consist of non-responsible members, composing the Executive Council of the Province, and drawn from the

*Para 189 of the Report p. 124.

senior public servants, or the prominent Indian public men, in the Province. By law one member at least of the Executive Council in a province must be a person, who, at the time of his appointment, has been for at least twelve years in the service of the crown in India. The council is to consist of members not exceeding four in number ; and so the qualifications required for those members of the council, who have not been public servants of the crown in India, are left to be determined by rules under the consolidating Act. In practice the senior provinces of Bombay, Madras and Bengal have Executive Councils of four members apiece, two of whom are senior civilians, and two non-official Indians. In other provinces the executive council is reduced to three in Bihar and Orissa, and to two in the other Governor's provinces, one member being in every case an Indian. This half of the Provincial executive Government is appointed by the King-Emperor by warrant under the Royal sign manual, and is responsible only to the Governor as representative of the Crown. It is untouchable in any way by the provincial legislature, and is uninfluenced by the latter's censure or want of confidence in it.

The other half of the provincial government is appointed by the Governor from among the elected representatives of the people of the province. These Ministers, as they are called, are appointed to administer certain branches of government, which are known as the Transferred subjects, to distinguish them from those other branches, called Reserved Subjects, which are administered by the members of the Executive Council. A Minister must himself have been elected a representative of the people, and cannot remain Minister, if within six months after his appointment as minister he fails to find a seat in the provincial legislature. Political parties have not yet grown up in India of the type familiar to the English people ; and so the convention of the British constitution that the Ministers of the Crown shall be chosen from that party which commands a majority in the Legislature has

yet to be developed in India.* Madras alone among the provinces of India has made a beginning in this direction. The counterpart of the convention that the Ministers cannot remain in office if their policy or measures do not find favour with a majority of the legislature is, similarly, unknown yet in India. For in the first three years of the new reformed legislatures, in almost every province, government proposals of the first magnitude have been turned down ; and yet not a single Minister resigned his office on that account. The resignation by a Minister in the United Provinces before his term was not the outcome of any vote of censure by the legislature, but the result of a difference of opinion with his principal subordinate. After the initial period of training, it is hoped the full convention will be adopted by the Indian governments, at least as regards the popular or responsible half, as it is in Britain.

The Ministers together with the Executive Councillors and the Governor make up the government of a province. Despite their different origin, or source of authority, they all rank alike as members of the Government, though the salaries of the executive councillors are fixed by law untouchable by the local legislature, while those of the Ministers are such as may be voted by the local legislative council. It was naturally apprehended, from this cumbrous division in government, that the results would not be satisfactory ; that the Ministers and councillors would have a different conception of their duties as they had a different source of their authority : that there might be frequent discussions between them, with the unavoidable consequent harm to the new reforms. The authors of the idea, however, adopted all precautions they could to make this novel experiment in governance a success.

* While these pages were going through the Press, several governors in India,—notably Lord Lytton—have made an offer to the leaders of the Swaraj party in the province—who have met with very considerable successes at the last General Election—to form the Ministry; the leaders of the Swaraj party, being pledged to an obstructionist programme, have refused the overtures so far.

They divided the subjects to be administered, and made clear rules for the composition of differences in the case of conflicting interests or overlapping jurisdictions. The Act lays down distinctly that the governor is to be guided by the advice of his Ministers in the administration of the Transferred Subjects, while provision is also made to give the Governor an overriding authority in the event of his dissenting from the advice of his Ministers. Rules have likewise been made for the division and allocation of financial resources which are calculated to avoid or minimise the occasions for conflict between these two branches of the Government.

The following rather lengthy extract from the Report of the Joint Select Committee on the Act of 1919 while it was passing through Parliament may be taken to represent the most considered judgment of the authors of this experiment.

"4. In the opinion of the Committee the plan proposed by the Bill is conceived wholly in this spirit, and interprets the pronouncement of the 20th August, 1917, with scrupulous accuracy. It partitions the domain of provincial government into two fields, one of which is made over to ministers chosen from the elected members of the provincial legislature while the other remains under the administration of a Governor-in-Council. This scheme has evoked apprehensions which are not unnatural in view of its novelty. But the Committee, after the most careful consideration of all suggested alternatives, are of opinion that it is the best way of giving effect to the spirit of the declared policy of His Majesty's Government. Its critics forget that the announcement spoke of a substantial step in the direction of the gradual development of self-governing institutions with a view to the progressive realisation of responisble government, and not of the partial introduction of responsible government; and it is this distinction which justifies the method by which the Bill imposes responsibility, both on Ministers to the legislative council and on the members of the legislative council to their constituents, for the results of that part of the administration which is transferred to their charge.

5. Having weighed the evidence and information before them, the Committee have made a number of changes in the Bill. Those of a more detailed or miscellaneous character are briefly discussed below under the clauses to which they relate. Those which are directed to the avoidance of the difficulties and dangers which have been pointed out, proceed on a simple and, in the Committee's opinion, an indefeasible theory. That theory the Committee think it desirable to state at once. Ministers who enjoy the

If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his executive council—circumstances which will be indicated in the Instrument of Instructions furnished to him on his appointment by His Majesty. On the other hand in and for that field of Government in which Parliament continues to hold him responsible, the provincial Governor-in-Council will remain equipped with the sure and certain power of fulfilling that responsibility. The Committee will indicate in the course of this Report how they visualise the relations between the two parts of the provincial government, but they wish to place in the forefront of the Report their opinion that they see no reason why the relations should not be harmonious and mutually advantageous. They regard it as of the highest importance that the Governor should foster the habit of free consultation between both halves of his government, and indeed that he should insist upon it in all important matters of common interest. He will thus ensure that ministers will contribute their knowledge of the people's wishes and susceptibilities and the members of his Executive Council their administrative experience, to the joint wisdom of the government. But while the Committee anticipate much advantage from amicable and, as far as possible, spontaneous association for purposes of deliberation, they would not allow it to confuse the duties or obscure the separate responsibility which will rest on the two parts of the administration. Each side of the government will advise and assist the other; neither will control or impede the other. The responsibility for administrative and legislative action in their own field will be fixed beyond possibility of doubt on ministers and on the majorities of the provincial legislatures which support them; and they will be given adequate power to fulfil their charge. Similarly within that field for which he remains accountable to Parliament, the responsibility for action must be fixed on the Governor-in-Council, and he must possess unfailing means for the discharge of his duties. Finally, behind the provincial authorities stands the Government of India."

This, as already noted, is the opinion of the most sympathetic parties connected with the latest constitutional reforms in India. But they do not seem to realise that to break up governmental functions in this manner introduces needless complications, and invites unavoidable dissensions. We do not, indeed, know anything positively yet of the experiences or position of the new popular members of the provincial governments; of how the decisions in executive policy are taken with or without their concurrence; of how often they or the Executive Councillors are overruled by the Governor, as he is empowered to do by statute in cases where the safety

or tranquillity of the province in his charge appears to him to be endangered; of how the councillors treat the Ministers, or how the latter feel their position and responsibilities as representing the popular sentiment, and having the popular support. But it may be presumed, without doing any violence to the facts of the case, that the difference in origin and outlook must inevitably assert itself in the relations between these two halves of the government, and be felt in the general administration. Again the division of subjects between the central and provincial governments does not by any means make over the most material section of governmental functions to the provinces. A substantial measure of responsible government, as promised in the declaration of August 1917, could have been more satisfactorily given by making the provinces completely autonomous, subject, if need were, to the general control of the Government of India as now provided, or subject to the overriding powers vested in the head of the provincial government in executive as well as legislative departments. With the supreme executive cabinet completely responsible to the provincial legislature, the permanent heads of departments could have easily enjoyed the dignity, security and prestige of a choice body of experts on whom the real excellence of the administration would then rest. As it is, not only the services are needlessly involved in the turmoil of politics,—which must necessarily be bitter in a period of transition; but the cumulative effect of central control, Governor's veto and overriding powers, and the division of functions between the two halves of the provincial government, makes the latter cumbrous and lacking in harmony, and altogether, defeats the intentions of the declaration of August 1917, at least as it was understood in India.

The following schedules give a division of functions as between the central and the provincial governments :—

The Division of Functions.

The following subjects are reserved to the Government of India, with the corollary that all others vest in the Provincial Governments :—

1. (*a*) Defence of India, and all matters connected with His Majesty's Naval, Military, and Air Forces in India, or with His Majesty's Indian Marine Service or with any other force raised in India, other than military and armed police wholly maintained by local Governments.

(*b*) Naval and military works cantonments.

2. External relations, including naturalisation and aliens, and pilgrimages beyond India.

3. Relations with States in India.

4. Political charges.

5. Communications to the extent described under the following heads, namely :—

(*a*) Railways and extra-municipal tramways, in so far as they are not classified as provincial subjects, under entry 6 (*d*) of Part II of this Schedule ;

(*b*) Aircraft and all matters connected therewith; and,

(*c*) Inland waterways, to an extent to be declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

6. Shipping and navigation, including shipping and navigation on inland waterways in so far as declared to be a central subject in accordance with entry 5 (*c*).

7. Light-houses (including their approaches) beacons, lightships, and buoys.

8. Port quarantine and marine hospitals.

9. Ports declared to be major ports by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

10. Posts, telegraph and telephones, including wireless installations.

11. Customs, cotton excise duties, income-tax, salt, and other sources of all-India revenues.

12. Currency and coinage.

13. Public debt of India.

14. Savings Banks.

15. The Indian Audit Department and excluded Audit Departments, as defined in rules framed under section 96-D (1) of the Act.

16. Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure.

17. Commerce, including banking and insurance.

18. Trading companies and other associations.

19. Control of production supply and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature to be essential in the public interest.

20. Development of industries, in cases where such development by a central authority is declared by order of the Governor-General in Council, made after consultation with the local Government or local Governments concerned expedient in the public interest.

21. Control of cultivation and manufacture of opium, and sale of opium for export.

22. Stores and stationery, both imported and indigenous, required for Imperial Departments.

23. Control of petroleum and explosives.

24. Geological survey.

25. Control of mineral development, in so far as such control is reserved to the Governor-General in Council under rules, made or sanctioned by the Secretary of State, and regulation of mines.

26. Botanical survey.

27. Inventions and designs.

28. Copyright.

29. Emigration from, and immigration into, British India, and inter-provincial migration.

30. Criminal law, including criminal procedure.

31. Central police organisation.

32. Control of arms and ammunition.

33. Control of agencies and institutions for research (including observatories), and for professional or technical training or promotion of special studies.

34. Ecclesiastical administration, including European cemetries.

35. Survey of India.

36. Archæology.

37. Zoological survey.

38. Meteorology.

39. Census and statistics.

40. All-India services.

41. Legislation in respect to any provincial subject in so far as such subject is in Part II of the Schedule stated to be subject to legislation by the Indian legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.

42. Territorial changes, other than inter-provincial, and declaration of law in connection therewith.

43. Regulation of ceremonial, titles, orders, precedence, and civil uniform.

44. Immovable property acquired by, and maintained at the cost, of the Governor-General in Council.

45. The Public Service Commission.

Part II.—Provincial Subjects.

1. Local self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in provinces for the purpose of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian legislature as regards—

(*a*) the powers of such authorities to borrow otherwise than from a provincial government, and

(*b*) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.

2. Medical administration, including hospitals, dispensaries, and asylums, and provision for medical education.

3. Public health and sanitation and vital statistics; subject to legislation by the Indian legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.

4. Pilgrimages within British India.

5. Education: provided that—

(*a*) the following subjects shall be excluded, namely :—

(*i*) the Benares Hindu University, and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be central subjects, and

(*ii*) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants; and

(*b*) the following subjects shall be subject to legislation by the Indian legislature, namely :—

(*i*) the control of the establishment and the regulation of the constitutions and functions of Universities constituted after the commencement of these rules, and

(*ii*) the definition of the jurisdiction of any University outside the province in which it is situated, and

(*iii*) for a period of five years from the date of the commencement of these rules, the Calcutta University, and the control and organisation of secondary education in the presidency of Bengal.

6. Public works included under the following heads, namely :—

(*a*) construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the province, and care of historical monuments, with the exception of ancient monuments as defined in section 2 (*1*) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section 3 (*1*) of that Act: provided that the Governor-General in Council may, by notification in the *Gazette of India*, remove any such monument from the operation of the exception;

(*b*) roads, bridges, ferries, tunnels, ropeways, and causeways, and other means of communication, subject to such conditions, as regards control over construction and maintenance of means of communication declared by the Governor-General in Council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor-General in Council may prescribe;

(*c*) tramways within municipal areas; and

(*d*) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by pro-

vincial legislation; subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.

7. Water-supplies, irrigation and canals, drainage and embankments, water storage and water power; subject to legislation by the Indian legislature with regard to matters of inter-provincial concern or affecting the relations of a province with any other territory.

8. Land revenue administration, as described under the following heads, namely:—

(*a*) assessment and collection of land revenue;

(*b*) maintenance of land records, survey for revenue purposes, records-of-rights;

(*c*) laws regarding land tenures, relations of landlords and tenants, collection of rents;

(*d*) Courts of Wards, incumbered and attached estates;

(*e*) land improvement and agricultural loans;

(*f*) colonisation and disposal of Crown lands and alienation of land revenue; and

(*g*) management of Government estates.

9. Famine relief.

10. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests, and prevention of plant diseases, subject to legislation by the Indian legislature in respect to destructive insects and pests and plant diseases, to such extent as may be declared by any Act of the Indian legislature.

11. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases; subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.

12. Fisheries.

13. Co-operative Societies.

14. Forests, including preservation of game therein; subject to legislation by the Indian legislature as regards disforestation of reserved forests.

15. Land acquisition; subject to legislation by the Indian legislature.

16. Excise, that is to say, the control of production, manufacture, possession, transport, purchase, and sale of alcoholic liquor and intoxicating drugs,

and the levying of excise duties, and license fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.

17. Administration of justice, including constitution, powers, maintenance and organisation of courts of civil and criminal jurisdiction within the province; subject to legislation by the Indian legislature as regards High Courts, Chief Courts and Courts of Judicial Commissioners, and any courts of criminal jurisdiction.

18. Provincial law reports.

19. Administrators-General and Official Trustees; subject to legislation by the Indian legislature.

20. Non-judicial stamps, subject to legislation by the Indian legislature, and judicial stamps, subject to legislation by the Indian legislature as regards amount of court-fees levied in relation to suits and proceedings in the High Courts under their original jurisdiction.

21. Registration of deeds and documents: subject to legislation by the Indian legislature.

22. Registration of births, deaths, and marriages; subject to legislation by the Indian legislature for such classes as the Indian legislature may determine.

23. Religious and charitable endowments.

24. Development of mineral resources which are Government property; subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.

25. Development of industries, including industrial research and technical education.

26. Industrial matters included under the following heads, namely:—

(*a*) factories;

(*b*) settlement of labour disputes;

(*c*) electricity;

(*d*) boilers;

(*e*) gas;

(*f*) smoke nuisances; and

(*g*) welfare of labour, including provident funds, industrial insurance (general, health and accident), and housing:

subject as to heads (*a*), (*b*), (*c*), (*d*) and (*g*) to legislation by the Indian legislature.

27. Stores and stationery; subject in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.

28. Adulteration of foodstuff and other articles; subject to legislation by the Indian legislature as regards import and export trade.

29. Weights and measures; subject to legislation by the Indian legislature as regards standards.

30. Ports, except such ports as may be declared by rule made by the Governor-General in Council or by or under Indian legislation to be major ports.

31. Inland waterways, including shipping and navigation thereon so far as not declared by the Governor-General in Council to be central subjects; but subject as regards inland steam vessels to legislation by the Indian legislature.

32. Police, including railway police; subject in the case of railway police to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine.

33. The following miscellaneous matters, namely:—

(*a*) regulation of betting and gambling;

(*b*) prevention of cruelty to animals;

(*c*) protection of wild birds and animals;

(*d*) control of poisons; subject to legislation by the Indian legislature;

(*e*) control of motor vehicles: subject to legislation by the Indian legislature as regards licenses valid throughout British India; and

(*f*) control of dramatic performances and cinematographs; subject to legislation by the Indian legislature in regard to sanction of films for exhibition.

34. Control of newspapers, books and printing presses; subject to legislation by the Indian legislature.

35. Coroners.

36. Excluded areas.

37. Criminal tribes; subject to legislation by the Indian legislature.

38. European vagrancy; subject to legislation by the Indian legislature.

39. Prisons, prisoners (except State prisoners), and reformatories; subject to legislation by the Indian legislature.

40. Pounds and prevention of cattle trespass.

41. Treasure trove.

Libraries (except the Imperial Library) and museums (except the Indian Museum, the Imperial War Museum, and the Victoria Memorial, Calcutta) and Zoological Gardens.

43. Provincial Government Presses.

44. Elections for Indian and provincial legislatures; subject to rules framed under sections 64 (1) and 72-A (4) of the Act.

45. Regulation of medical and other professional qualifications and standards; subject to legislation by the Indian legislature.

46. Local Fund Audit, that is to say, the audit by Government agency of income and expenditure controlled by local bodies.

47. Control, as defined by rule 10, of members of all-India and provincial services serving within the province; and control, subject to legislation by the Indian legislature, of public services within the province other than all-India services.

48. Sources of provincial revenue, not included under previous heads, whether:—

(a) taxes included in the Schedules to the Scheduled Taxes Rules; or

(b) taxes not included in those Schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor-General.

49. Borrowing of money on the sole credit of the province; subject to the provisions of the Local Government (Borrowing) Rules.

50. Imposition by legislation of punishments by fine, penalty or imprisonment for enforcing any law of the province relating to any provincial subject; subject to legislation by the Indian legislature in the case of any subject, in respect of which such a limitation is imposed under these rules.

51. Any matter which, though falling within a central subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

52. Matters pertaining to a central subject in respect of which powers have been conferred by or under any law upon a local Government.

And, among the provincial branches of administration, the next table shows the subjects Transferred to the Ministers.

List of Provincial Subjects Transferred.

1. Local self-government—that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district

boards, mining boards of health, and other authorities established in the provinces for purposes of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian legislature as regards (*a*) the powers of such authorities to borrow otherwise than from a provincial Government, and (*b*) the levying by such authorities of taxation not included in Schedule I (a) to the Schedule Taxes Rules.—All Governors' provinces.

2. Medical administration, including hospitals, dispensaries and asylums, and for medical education.—All Governors' provinces.

3. Public health and sanitation and statistics; subject to legislation by the Indian legislature in respect to infection and contagious diseases to such extent as may be declared by any Act of the Indian legislature.—All Governors' provinces.

4. Pilgrimages within British India.—All Governors' provinces.

5. Education, other than European and Anglo-Indian education, provided that—

(*a*) The following subjects shall be excluded, namely:—

(i) The Benares Hindu University and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be central subjects, and

(ii) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants; and—(II. European and Anglo-Indian education is transferred in Burma).

(*b*) The following subjects shall be subject to legislation by the Indian legislature, namely:—

(i) The control of the establishment and the regulation of the constitutions and functions of University constituted after the commencement of these rules, and

(ii) The definition of the jurisdiction of any University outside the province in which it is situated, and

(iii) For a period of five years from the date of the commencement of these rules, the Calcutta University and the control and organisation of secondary education in the Presidency of Bengal.—All Governors' provinces.

6. Public Works included under the following heads, namely:—

(a) construction and maintenance of provincial buildings, other than residences of Governors of provinces, used or intended for any purpose in connection with the administration of the province on behalf of the departments concerned, save in so far as the Governor may assign such work to the departments using or requiring such buildings; and care of historical monuments, with the exception of ancient monuments as defined in section 2 (1) of the Ancient Monuments Preservation Act, which are for the time being declared to be protected monuments under section 3 (1) of that Act; provided that the Governor-General in Council may, by notification, in the *Gazette of India*, remove any such monument from the operation of this exception;

(b) Roads, bridges, ferries, tunnels, ropeways, and causeways, and other means of communication, subject to such conditions as regards control over construction and maintenance of means of communication declared by the Governor-General in Council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor-General in Council may prescribe.

(c) Tramways within municipal areas; and

(d) Light and feeder railway and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation; subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line. All Governors' provinces except Assam.

7. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases; subject to legislation by the Indian legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian legislature.—All Governors' provinces.

8. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases; subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.—All Governors' provinces.

9. Fisheries.—All Governors' provinces; except Assam.

10. Co-operative Societies.—All Governors' provinces.

11. Forests, including preservation of game therein ;subject to legislation by the Indian legislature as regards disforestation of reserved forests.

12. Excise, that is to say, the control of production, manufacture, possession, transport, purchase, and sale of alcoholic liquor and intoxicating drugs and the levying of excise duties and license fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture, and sale for export. —All Governors' provinces, except Assam.

13. Registration of deeds and documents; subject to legislation by the Indian legislature. —All Governors' provinces.

14. Registration of births, deaths, and marriages; subject to legislation, by the Indian legislature for such classes as the Indian legislature may determine.—All Governors' provinces.

15. Religious and charitable endowments.—All Governors' provinces.

16. Development of industries, including industrial research and technical education.—All Governors' provinces.

17. Stores and stationery required for transferred departments; subject in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council. —All Governors' provinces.

18. Adulteration of food-stuffs and other articles; subject to legislation by the Indian legislature as regards import and export trade.

19. Weights and measures; subject to legislation by the Indian legislature as regards standards.—All Governors' provinces.

20. Libraries (other than the Imperial Library), Museums (except the Indian Museum, the Imperial War Museum, and the Victoria Memorial, Calcutta) and Zoological Gardens. —All Governors' provinces.

IX. Royal Instructions to the Supreme Heads of Government in India.

The following instructions to the provincial governors in India, not only bring the latter on a par with the governor of a self-governing colony, but also manifest a praiseworthy solicitude on the part of the King-Emperor for the minorities and special interests.

Instructions to the Governor of a Province.

Prior to the inauguration of the Reforms the following Instructions were issued to Governors under the Royal Sign Manual:—

Instructions to the Governor or acting Governor for the time being of the Presidency or Province of———Whereas by the Government of India Act provision has been made for the gradual development of self-governing institutions in British India with a view to the progressive realisation of Responsible Government in that country as an integral part of our Empire, and whereas it is our will and pleasure that in the execution of the office of the Governor in and over the Presidency or the Province of——you shall further the purposes of the said Act to the end that the institutions and methods of Government therein provided shall be laid upon the best and surest foundations, that the people of the said Presidency or Province shall acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government, and that our authority and the authority of the Governor-General-in-Council shall be duly maintained. Now, therefore, we do hereby direct and enjoin you and declare our will and pleasure to be as follows:—

1. You shall do all that lies in your power to maintain those standards of good administration, to encourage religious toleration, co-operation and good will among all classes and creeds, to ensure the probity of public finance and the solvency of the Presidency or Province, and to promote all measures making for the moral, social, and industrial welfare of the people without distinction to take their due share in the public life and government of the country.

2. You shall bear in mind that it is necessary and expedient that those now and hereafter to be enfranchised shall appreciate the duties, responsibilities and advantages which spring from the privilege, of enfranchisement, that is to say,

that those who exercise the power, henceforward entrusted to them, of returning representatives to the Legislative Council being enabled to perceive the effects of their choice of a representative, and that those who are returned to the Council, being enabled to perceive the effects of their votes given therein, shall come to look for the redress of their grievances and the improvement of their condition to the working of representative institutions.

3. **Duty of the Ministers** : Inasmuch as certain matters have been reserved for the administration, according to law, of the Governor in Council, in respect of which the authority of our Governor-General in Council shall remain unimpaired, while certain other matters have been transferred to the administration of the Governor acting with a Minister, it will be for you so to regulate the business of the Presidency or Province that so far as may be possible, the responsibility for each of these respective classes of matters may be kept clear and distinct.

4. Nevertheless, you shall encourage the habit of joint deliberation between yourself, your councillors and your ministers in order that the experience of your official advisers may be at the disposal of your ministers, and that the knowledge of your ministers as to the wishes of the people may be at the disposal of your councillors.

5. You should assist ministers by all the means in your power in the administration of the transferred subjects and advise them in regard to their relations with the Legislative Council.

6. In considering a minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion you shall have due regard to his relations with the Legislative Council and to the wishes of the people of the Presidency or Province, as expressed by their representatives therein.

Special Charges:—But in addition to the general responsibilities with which you are, whether by statute or under this instrument, charged, we do further hereby specially charge you:—

(1) To see that whatsoever measures in your opinion are necessary for maintaining safety and tranquillity in all parts of your Presidency or Province, and for preventing occasions of religious or racial conflict are duly taken, and that all orders issued by our Secretary of State or by our Governor-General-in-Council on our behalf, to whatever matters relating, are duly complied with.

(2) To take care that due provision shall be made for the advancement and social welfare of those classes amongst the people committed to your charge, who whether on account of the smallness of their number or their lack of educational or material advantages, or from any other cause, specially rely upon our protection, and cannot as yet fully rely for their welfare upon joint political action, and that such classes shall not suffer or have cause to fear neglect or oppression.

(3) To see that no order of your Government and no act of your Legislative Council shall be so framed that any one of the diverse interests of, or arising from, race, religion, education, social condition, wealth or any other circumstance may receive unfair advantage or may unfairly be deprived of privileges or advantages which they have heretofore enjoyed, or be excluded from the enjoyment of benefits which may hereafter be conferred on the people at large.

(4) To safeguard all members of our services employed in the said Presidency or Province in the legitimate exercise of their functions and in the enjoyment of all recognised rights and privileges, and to see that your Government order all things justly and reasonably in their regard, and that due obedience is paid to all just and reasonable orders and diligence shown in their execution.

(5) To take care that while the people inhabiting the said Presidency or Province shall enjoy all facilities for the development of commercial and industrial undertakings, no monopoly or special privilege which is against the common interests shall be established; and no unfair discrimination shall be made in matters affecting commercial or industrial interests.

X. Sketch of a Provincial Administration.

The old distinction of Regulation and non-Regulation Provinces is now practically abolished. The provincial administration of to-day is, in the branches of government assigned to it, and subject to the general supervision of the central Government or the Secretary of State, fairly autonomous. The actual work of Government is divided up between the Executive Council and the Ministry both working together under the general control of the Governor, who is an imperial officer not responsible to the local legislature, and who has powers to override either or both parts of his government, and also his legislative council. The latter body is instituted in every important province with a fairly wide field of legislative activity as well as financial authority. The Secretariats of the Provincial Governments are divided into departments, each under a Secretary with subordinate officers as in the case of the Supreme Government. Thus in Bombay the secretariat is divided into five main departments: 1. Revenue and Financial; 2. Political, Judicial and Special; 3. General, Marine and Ecclesiastical; 4. Ordinary Public Works; 5. Irrigation. The senior of the three Civilian Secretaries is called the Chief Secretary. In addition to the secretariat there are special departments such as Inspectors-General of Police, Jails and Registration; Director of Public Instruction; the Inspector-General of Civil Hospitals; the Sanitary Commissioner; and the Superintendent of the Civil Veterinary Departments. There are also

the Chief Engineers for Public Works who are likewise Secretaries to the Governments in the Public Works Department. Each of the principal departments of the civil service is under the charge of an officer who is attached to and advises the local Government. He himself is brought in touch with local works by making frequent tours of inspection. Except in Bombay, the Revenue Department is administered under the Governor by a Board of Revenue, consisting of two or three members who are the highest officers in the administrative branch of the service. The work of this board may be divided into the department of Land Revenue and the departments of Excise, Opium, Income Tax, etc. The members of the Board may act separately or collectively according to the practice prevailing in each province. In Madras, the Board consists of four members, two of whom are Land Revenue Commissioners, and a Settlement Commissioner and one a Commissioner for Salt, Excise, Income Tax and Customs. The similar departments are controlled in Bombay by the Director of Land Records and Agriculture, and the Commissioners of Stamps, Excise, and Opium. These officers are immediately subordinate to a local Government. Besides these officers each Government has its own law officer, called the Advocate-General, to advise it on legal questions, and to conduct important cases in which the Government is interested.

In all provinces the actual system of administration is based on the repeated division of territories. Each unit of administration is in the responsible charge of an officer who is subordinate to the officer next in rank above him. The most important of this administrative units is the District, and the most accurate impression of the system of Indian administration is gained by regarding a Province as consisting of a collection of districts, which may themselves be split up into sub-districts and smaller areas still. There are 250 districts in British India, each of an average size of 4432 square miles, and the average population of close upon a million. Several districts are combined into a Division. There are four such Divisions in

the Presidency of Bombay namely Sind, the Northern Division, the Central Division and the Southern Division. Each Division is in the charge of a Divisional Commissioner. In Madras, there are no such Divisions, the Districts being immediately under the Provincial Government there.

XI. District Administration.

"The District Officer," says Sir William Hunter in the Indian Empire, "whether known as the Collector-Magistrate or Deputy Commissioner, is the responsible head of his jurisdiction. Upon his energy and personal character depends ultimately the efficiency of our Indian Government. His own special duties are so numerous and various as to bewilder the outsider; and the work of his subordinates, European and Native, largely depends upon the stimulus of his personal example. The Indian Collector is a strongly individualised worker in every department of rural wellbeing, with a large measure of local independence and of individual initiative. As the name of the Collector-Magistrate implies, his main functions are two-fold. He is a fiscal officer charged with the collection of the revenue from land and other sources; he is also a Revenue, and Criminal Judge, both in the first instance and in appeal. But his title by no means exhausts his multifarious duties. He does in his smaller sphere all that the Home Secretary superintends in England, and a great deal more, for he is the representative of a paternal, and not of a constitutional, Government. Police, jails, education, municipalities, roads, sanitation, dispensaries, the local taxation and the Imperial

revennes of his district are to him matters of daily concern. He is expected to make himself acquainted with every phase of the social life of the natives and with each natural aspect of the country. He should be a lawyer, an accountant, a financier and a ready writer of state-papers. He ought also to possess no mean knowledge of agriculture, political economy and engineering."

This sketch of his duties is substantially true, though the independent initiative which the District Officer formerly enjoyed has been of late considerably restricted. Even to-day a Collector is the principal officer in his district. He is the local representative of the Government. His duties as Collector differ in different provinces according to the system on which the Land Revenue is assessed. Though he is not the only officer in the district, he is the supreme officer; and nothing can pass in the district of which it is not his duty to keep himself informed and to watch the operation. He must watch the vicissitudes of trade, the state of the weather, the administration of civil justice. He must avoid undue interference in matters which are not primarily within his control, but must offer his remonstrance against anything which he believes to be wrong in the interests of the people. He is also a Magistrate of the First Class, though in practice he does not try in person many criminal cases. But he supervises the work of all other magistrates in his district. He is responsible for the peace of the district and suppression of crime.

The District Officer is assisted by a staff of officers both English and Indian. The most important officer under his command is the assistant Magistrate, who is also called the senior Assistant-Collector. He must be a man of some length of service and experience; the extent of his authority mainly depends on the amount of confidence reposed in him by the District Officer. The District Superintendent of Police is another officer on the staff of the District Officer to whom he

is responsible for the internal peace and order of the district, for the detection and suppression of crimes, and for the prosecution of criminals. For the internal management of the Police affairs, he is however, responsible only to his immediate superior at the headquarters.

In consequence of the formation of special departments, such as those of public works, sanitation and education, the functions of the District Officers are now-a-days less important than before. But even in these special departments the active co-operation and the advice of the District Officer are always needed. So also in the new self-governing institutions, such as the municipalities within his districts, which are all guided and controlled in their working by the District Officer. He used to be also generally the chairman of the District Board which, with the aid of subsidiary Boards, maintains roads, schools and dispensaries and carries out sanitary improvements in rural areas.

In fine the District Officer rules and guides the people, informs the Government of every thing that takes place in his district, suggests improvements, and protests against innovations which he considers detrimental to the interests of the people within his jurisdiction, and maintains peace and order and good feeling among the various races in his charge.

The District is divided into a number of small units each in the charge of a responsible officer. In general the districts are split up into sub-divisions under the charge of officers of the Imperial Civil Service, or the members of the provincial service; and these sub-divisions are in their turn further divided into minor charges each under officers of the subordinate service. Each sub-divisional officer usually resides at the headquarters of his jurisdiction and has a court house, office, sub-treasury, and sub-jail at his headquarters. In Bombay and in the United Provinces the sub-divisional officers generally live at the head office of the district when not on tour. In these two provinces, as well as in Madras, sub-district units

are styled *Talukas* or *Tahsils*, and are administered by *Tahasildars*, or *Mamlatdars* as they are called in Bombay. These officers belong to the subordinate service. The area of an ordinary Tahsil is from 400 to 600 square miles. The Tahsildar is assisted by his subordinate officers, styled revenue inspectors, or *Kanungos* and the village officers. The latter are mostly hereditary. The most important of them are : the *Patel* or the headman, who collects the revenue, and, in Madras, also acts as a petty Magistrate and Civil Judge; the *Kulkarni* or *Patvari* who keeps the village accounts, register of holdings, and in general all records connected with the land revenue ; and the *Chokidar* or village watchman who is the rural policeman. The Indian village organization is very ancient and endures even now, though with modifications required by the peculiar character of the present system of government.

For Judicial purposes, there are High Courts of justice in Bengal, Madras, Bombay, Bihar and Orissa, the United Provinces and the Punjab. Burma has a Chief Court, while Assam and the Central Provinces have courts of Judicial Commissioner.

XII. Relations between the Government of India and the Heads of Provinces.

It would be as interesting to know as it is difficult to say, what exactly are the relations between the supreme Government and its various subordinate chiefs. On paper, of course, everything seems to be so well ordered as to leave hardly any room for friction. But in reality there is not always found that smooth and noiseless working of the wheels of government as an uninitiated outsider would be inclined to believe in. We know for a fact that Sir Bartle Frere, as the Governor of Bombay, in the days when Sir John Lawrence was the Viceroy of India,

caused more than one sleepless night to the Viceroy on the question of the failure of the Bank of Bombay as well as on questions of Frontier policy. It is also recorded that the Duke of Buckingham, as Governor of Madras under Lord Lytton, caused a serious obstruction to that Viceroy's famine policy; so much so that the Home Government had to interfere, and to recall, almost peremptorily, the refractory Duke. Perhaps it was to such cases as these that Lord Curzon alluded in one of his farewell speeches: "In old volumes of our proceedings which it has been my duty to study at midnight hours, I have sometimes come across peppery letters or indignant remonstrances, and have seen the spectacle of infuriated proconsuls strutting up and down the stage." For himself, he added, notwithstanding the fact that during his seven years' tenure of the Viceroyalty nearly thirty Governors, Lieutenant-Governors and Chief Commissioners had come and gone, there never had been a time when the relations between the Supreme Government and the heads of the local Governments had been so free from friction or so harmonious. No one except those intimately connected with the Government of India can say how often such friction arises even to-day. It would seem, however, that the prevalance of the more liberal views as regards the extent of the authority of local Governments, the great expansion of their Legislative Councils and the greater harmony between the rulers and the ruled resulting therefrom, the large concessions in matters of finance, the definite demarcation of the other spheres of public activity, the growth of precedent, the improved means of rapid communications, and above all the characters of the men chosen for such posts have all combined to minimise, if not entirely to destroy all causes of friction. The right to be obeyed is so firmly established in the Government of India, that the privilege of subordinate proconsuls to tender their resignation by way of a protest against the undue encroachments or interference of the supreme authority has ceased to be a censure upon the Viceregal powers, and is rather a means of affording a speedy solution of an unpleasant problem. The resignation of Sir Bamfylde

Fuller afforded the last instance of this nature, vindicating the right of the Supreme Government to be obeyed, as well as the right of its lieutenant to be relieved of an untenable situation. With the devolution of authority to the new elements of popular responsibility in the provinces, occasions of friction between the central and provincial authorities must further diminish, though it is even now conceivable that in problems of first class importance, like the arrest and trial of a Gandhi, there may be difference of opinion between the supreme and the local government.

XIII. The Structure of Indian Government.

The question of provincial autonomy, which has been exercising the minds of the public for some time past, and which is discussed more in detail hereafter, will best be solved by trying to understand whether our present constitution is unitary or federal in form. In a Unitary Government, like that of England or France, all sovereign power is concentrated in the hands of the Central Government. There may, indeed, be a division of functions between the central and local governing bodies. But the division in no case amounts to a distribution of sovereign powers. The local governing bodies are the creatures, the delegates and the dependents of the central power, which is the sole, supreme, sovereign authority in the state; and between which and the local bodies no other sovereign or semi-sovereign authority is interposed. On the other hand the chief characteristic of a Federal Government is the distribution of sovereignty between the Federal power and its constituent states. A federation is a combination of several independent states into one single state. The combining states may have desired, or been compelled, to unite in order to promote their economic development, or to secure their political integrity or safety. But even when combined they do not lose all trace of

their original independence. Hence the new central state, made by the union of the old independent states, is entrusted only with such sovereign powers as the combining states might decide to vest in a central authority. Consequently even in cases where the necessity of unification is enforced by the considerations of self-preservation, the central authority, though allowed a liberal share of sovereign powers, is never quite the undisputed sovereign which the similar authority in a unitary state is. There is always a difference between powers allotted to the central authority and those reserved for individual states.

The Government of India resembles, as well as differs from, both these kinds of states. The dominant position of the Supreme Government in India, and its unquestioned powers of control, and even of creation, suggest a great affinity to a unitary state. But the presence of Provincial Governments,—which are an intermediary between the Supreme Government and the local governing bodies, and which are essentially deputies of the Supreme Government—serves to distinguish the Government of India from a unitary state. Nor can we quite describe it as a federal state. The mere presence of a number of provinces, each with its own separate Government, is not enough to constitute a federation. With the exception of the three Presidencies, all the other provinces in India have been created by the central authority in order to relieve the latter of some portion of its heavy administrative work. In stead, therefore, of the provinces combining to create a united central Government, as is the case in federations, it was rather the central Government which deputed its minor functions of government in order to strengthen its main hold. Even the originally independent Presidencies were forced to submit to the central authority. Besides, the supremacy of the central Government once established, it is unquestioned in every province. In so far as the Government of India can themselves be called a sovereign power, there is really no distribution of sovereignty between them and the various provincial Governments.

It must, however, be remembered that the Government of India themselves are not sovereign in the sense that the King in Parliament is the sovereign of the whole British Empire. They are, in fact, more under the control of the Secretary of State for India, than the self-governing colonies are under the control of the Secretary of State for the colonies. Such decentralisation, therefore, as already exists in this country, notably in financial matters, is hardly large enough to amount to a distribution of sovereignty, and yet not insignificant enough to be described as a mere delegation of powers which can be resumed by the Central Government whenever the latter choose to do so.

The case of the Government of India, therefore, must be classed by itself. There is no doubt a division of work between the Supreme and the Provincial Governments; but the division is brought about for the sake of administrative convenience, and not out of any deliberate desire to create independent, semi-sovereign authorities. The view, however, is gaining ground that even if in the past, there was no such deliberate intention to establish semi-sovereign states in the provinces, it is high time that they were so regarded now—a view which will be examined hereafter. This tendency, more than any actual organization of Government, precludes us from regarding ours as a unitary state.

XIV. Provincial Autonomy.

The question of giving wider powers to the provinces is at least as old as the Government by the Crown directly. In his speeches on India about the time that the government of the country was transferred to the Crown, Mr. Bright repeatedly insisted upon the necessity of a greater decentralisation. Commenting on those speeches, Sir John Strachey remarks that the suggestion of Bright for a separate, independent government for each of the Presidencies of India, subject only to the British

Crown, and for the abolition of the Central Government, is impracticable. "There is clearly nothing more essential to the maintenance of our empire in India, "says he "than a strong central authority: but Mr. Bright's belief was undoubtedly true that there could be no successful government in India, unless the fundamental fact of the immense diversity of the Indian peoples and countries be recognised, and each great province be administered with a minimum of interference from outside."

On the other hand Lord Curzon believed:

> "In a strong Government of India gathering into its own hands and controlling all the reins. But I would ride local Governments on the shaffle and not in the curb: and I would do all in our power to consult their feelings, to enhance their dignity, and to stimulate their sense of responsibility and power."

The views of the Government of India underwent an almost radical change six years later. The famous Delhi despatch of Lord Hardinge's Government says:

> It is certain that, in the course of time, the just demands of Indians for a larger share in the Government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the Supreme authority of the Governor General-in-Council. The only possible solution of the difficulty would appear to be gradually to give the provinces a large measure of self Government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing powers to interfere in cases of mis-government, but ordinarily restricting themselves to matters of Imperial concern. In order that this consumma-

tion may be attained, it is essential that the Supreme Government should not be associated with any particular provincial Government. "

These show how easy it is, even for trained and experienced public men, to take different views of such a complex problem, and how difficult it is to offer a simple and satisfactory solution by men relatively inexperienced and ignorant of the actual difficulties of the problem. As early as 1833 an attempt was made to confine the interference of the Supreme Government in a local concern to the requirements of a just control, indispensable to the maintenance of the Imperial unity and avoid all "petty, vexations and meddling interference." But in practice it is very difficult to determine exactly where the just control of general principles ends, and the petty, vexatious, meddlesome interference in details begins. It may quite conceivably happen that what is normally a detail, which had best be left to the local Government, might in exceptional circumstances, assume the dignity of a great principle. Take for instance the Cawnpore Mosque case, where the Viceroy interfered in apparently only a local riot ; or the still later case of the United Provinces Municipalities Act, where the interference of the Supreme Government was invoked by the people, though strictly speaking, it was only a matter of detail. Under such circumstances the Government of India, and even the Secretary of State, must assert themselves. It is, therefore, not quite a thing to be wished for that the relations, between the Supreme Government and its local subordinates should acquire the rigidity of a federal constitution ; rather should they be capable of being readily adaptable to new or changing conditions.

The ideal of provincial autonomy, however, has been too definitely accepted by the leaders of the Indian opinion to allow a criticism of that ideal without a charge of want of sympathy with the noble ideal of self-government. And yet it must be said that the history of the last century or so all over the world shows

the struggle of imperialism—if one may so describe the centralising tendencies—against provincialism, resulting in the indisputable victory of the former. Prussia helps to form the German Empire, and Sardinia Italy. The provinces of Canada unite to form a Dominion and the States of Australia—admittedly the most democratic of the self-governing colonies of England-voluntarily combine to form the Commonwealth. Even in the United States the power and prestige of the central Government have grown immensely at the expense of local independence. And territorial acquisitions, or political influence, beyond the frontiers of the United States ars not rigidly excluded. Hence a centralised government is not necessarily hostile to the development of democracy, or to its maintenance. It is doubtful, moreover, if a complete provincial autonomy in India would be quite to the advantage of the people. No doubt provincial autonomy would secure better representation of the people in the councils of the Government, and facilitate the advent of responsible government on the model of the Governments in England or the colonies. But if this increased representation in the Provincial Councils and greater responsibility are obtained without any change in the powers of Supreme Government, the self-government so obtained would be illusory. True self-government for India can only be realised when the Supreme Government becomes perfectly amenable to public opinion in India. If that is accomplished provincial autonomy would have very little value beyond sentiment; and if that remains unachieved provincial autonomy would be only one more agency to raise hopes which might never be realised. The necessity of a real self-government as thus defined is emphasised by the economic conditions of India. If our industrial development is to be pushed on rapidly, if our citizens in other parts of the British Empire are to be considered and treated much better than slaves, we need a Central Government which is national in its composition as well as in its tone; and which can protect and promote the interests of its citizens both

at home and abroad more than any Provincial Government possibly can do.

If we stretch our imagination and look a little in the future the problem of decentralisation,-of Provincial Autonomy,-would be seen to wear an entirely different aspect. The people of India disunited by centuries of misunderstandings have at last been united, or are beginning to be united in a single nationality. If they would be left to themselves they would soon forget that they are Hindus or Mahomedans in trying to learn that they are Indians, and that they have to accomplish the Herculean task of restoring India to the position that she once occupied as the centre of the civilised world. This task can never be accomplished by another people than the Indians themselves, however sincere and sympathetic that other people might be. To achieve this, self-government would be indispensable. But it does not need, it would, indeed, gravely be prejudiced by any separation in different provinces. The most serious problem before a united self-governing India in the near future would be, not how to give the greatest play to local sentiment, but how to wrest the economic supremacy from Japan or Germany. To solve that we shall need the undivided strength of every one who thinks of India before thinking of Bengal or Gujerat; we shall have to organise and co-ordinate resources of the entire peninsula with a view to bring them to bear on one single issue. If therefore, the ideal of provincial autonomy means the weakening of the central government, we may confidently say that a self-governing India, ten years after the realisation of self-government, will have no need for it, whatever be the vogue for it to-day.

Since 1917, however, a new ideal of Indian political development seems to have been definitely accepted and codified. **"Our Conception of the eventual future of India is a sisterhood of States" says the Reforms Report, para 349.** We have already noticed in a previous chapter that the Government of India has in the past been a central military

government, which had, however, admitted a certain degree of decentralisation. But the devolution was the result not of any concession to strong local sentiment but purely for administerative convenience. It was true this convenience had crystallised into such a hard fact that the resumption of complete authority by the central government was next to impossible, it is also true that the reviving political consciousness of the people of India made them see in the expansion of the powers delegated to the provincial governments the surest means of securing their own increasing association in the task of government. The government, therefore, fell in with a growing current of Indian public opinion when it announced as its settled policy the increasing association of the people of India, and directed attention to the possibilities of provincial autonomy as the only means to accomplish that end.

But because for once government convenience has coincided with popular ambitions, it does not necessarily follow that the ideal is either feasible, or acceptable. The provinces and states of India are units without any unity. They are the creations of political expediency, without a link that could serve for permanent cohesion. The provinces might foster a sense of local patriotism, and thestates a feeling of personal loyalty, which will, if tolerated at all, result in the most disastrous seeds of internal rivalries and jealousies, ending, as sure as fate, in the rapid undermining of national solidarity. The Reforms para from which we have quoted above goes on to observe:—

"Over this congeries of states would preside a central government, increasingly representative of and responsible to the people of all of them; dealing with matters both internal and external of common interest to the whole of India; acting as arbiter of interstate relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire."

This picture is necessarily over-coloured. The Central Government will appear in the light of either a meddlesome

interferer, or else a parasite which it will be no one's interest to support. It will be, maintained into power by alien authority, under pretext of extra Indian responsibility. It aims at representing all India on equal terms with the self-governing members of the British Empire; but will, if allowed to weaken by the growth of provincial autonomy and local patriotism, end by becoming the instrument of foreign tyranny. The present financial arrangements make it appear in the light of a provincial pensioner, busy with all the wasteful and extravagant departments of public activity. Even assuming these arrangements to be temporary, the bad odour created by such an arrangement cannot altogether be destroyed.

The public opinion of India, led by men who desired to progress on the lines of least resistance has been betrayed into a gigantic political error. The true self-government in India can never be established so long as the central authority remains irresponsible. The reservation of powers provided for in the Act of 1919 is sufficient proof of this remark. India has ever aimed at being one, no matter the accidents of our history. For the Indian people, at a stage in their political development, deliberately to abandon or weaken the principle of national solidarity and Indian unity is, to say the least, politically suicidal. And hence we cannot accept the goal indicated in the above quotation, as much because, it would render this country an easy prey for designing outsiders, as because it would increase and intensify internal jealousies, and prevent the consummation of our political ambitions, the establishment of a strong, national, democratic government in India.

CHAPTER V.

The Indian Legislature.

63. Subject to the provisions of this Act, the Indian legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Except, as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

63 A. (1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under this Act, of whom not more than twenty shall be official members.

(2) The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

63 B. (1) The Legislative Assembly shall consist of members nomitnated or elected in accordance with rules made under this Act.

(2) The total number of members of the Legislative Assembly shall be one-hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred:

Provided that rules made under this Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members.

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

63 C. (1) There shall be a president of the Legislative Assembly, who shall, until the expiration of four years from the first meeting thereof, be a person appointed by the Governor-General, and shall thereafter be a member of the Assembly elected by the Assembly and approved by the Governor-General:

Provided that, if at the expiration of such period of four years the Assembly is in session, the president then in office shall continue in office until the end of the current session, and the first election of a president shall take place at the commencement of the ensuing session.

(2) There shall be a deputy-president of the Legislative Assembly, who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(3) The appointed president shall hold office until the date of the election of a president under this section, but he may resign his office by writing under his hand addressed to the Governor-General, or may be removed from office by order of the Governor-General, and any vacancy occurring before the expiration of his term of office shall be filled by a similar appointment for the remainder of such term.

(4) An elected president and a deputy-president shall cease to hold office if they cease to be members of the Assembly. They may resign office by writing under their hands addressed to the Governor-General, and may be removed from office by a vote of the Assembly with the concurrence of the Governor-General.

(5) A president and deputy-president shall receive such salaries as may be determined, in the case of an appointed president by the Governor-General, and in the case of an elected president and a deputy-president by Act of the Indian legislature.

63 D. (1) Every Council of State shall continue for five years, and every Legislative Assembly for three years from its first meeting:

Provided that—

(*a*) either chamber of the legislature may be sooner dissolved by the Governor-General; and

(*b*) any such period may be extended by the Governor-General if in special circumstances he so thinks fit; and

(*c*) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months, or with the sanction of the Secretary of State not more than nine months, after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

3 Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

63 E. (1) An official shall not be qualified for election as a member of either chamber of the Indian legislature, and if any non-official member of either chamber accepts office in the service of the Crown of India, his seat in that chamber shall become vacant.

(2) If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat in such first-mentioned chamber shall thereupon become vacant.

(3) If any person is elected a member of both chambers of the Indian legislature, he shall, before he takes his seat in either chamber, signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant.

(4) Every member of the Governor-General's Executive Council shall be nominated as a member of one chamber of the Indian legislature, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers.

64. (1) Subject to the provisions of this Act, provision may be made by rules under this Act as to—

(a) the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; and

(b) the conditions under which and manner in which persons may be nominated as members of the Council of State or the Legislative Assembly; and

(c) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative

Assembly (including the number of members to be elected by communal and other electorates and any matters incidental or ancillary thereto; and

(d) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly; and

(e) the final decision of doubts or disputes as to the validity of an election; and

(f) the manner in which the rules are to be carried into effect.

(2) Subject to any such rules, any person who is a ruler or subject of any state in India may be nominated as a member of the Council of State or the Legislative Assembly.

65. (1) The Indian legislature has power to make laws

(a) for all persons, for all courts, and for all places and things, within British India; and

(b) for all subjects of His Majesty and servants of the Crown within other parts of India; and

(c) for all native Indian subjects of His Majesty, without and beyond as well as within British India; and

(d) for the government officers, soldiers, airmen and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act; and

(e) for all persons employed or serving in or belonging to the Royal Indian Marine Service; and

(f) for repealing or altering any laws which for the time being are in and part of British India or apply to persons for whom the Indian legislature has power to make laws.

(2) Provided that the Indian legislature has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting

(i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act, the Air Force Act and any Act amending the same) or

(ii) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the government of India;

and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

(3) The Indian legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a high court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any high court.

66. (1) A law made under this Act for the Royal Indian Marine Service shall not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, that is to say, the high seas between the cape of Good Hope on the West and the Straits of Magellan on the East, and any territorial waters between those limits.

(2) The punishments imposed by any such law for offences shall be similar in character to, and not in excess of, the punishments which may, at the time of making the law, be imposed for similar offences under the Acts relating to His Majesty's Navy, except that, in the case of persons other than Europeans or Americans, imprisonment for any term not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude.

67. (1) Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the Legislative Assembly in the absence of the president and the deputy-president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

(2) It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of either chamber of the Indian legislature any measure affecting—

(*a*) the public debt or public revenues of India or imposing any charge on the revenues of India; or

(*b*) the religion or religious rites and usages of any class of British subjects in India; or

(*c*) the discipline or maintenance of any part of His Majesty's military, naval, or air forces; or

(*d*) the relations of the Government with foreign princes or states or any measure—

(i) regulating any provincial subject, which has not been declared by rules under this Act to be subject to legislation by the Indian legislature ; or

(ii) repealing or amending any Act of a local legislature ; or

(iii) repealing or amending any Act or ordinance made by the Governor-General.

(2*a*) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment. and effect shall be given to such direction.

(3) If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers : Provided that standing orders made under this section may provide for meetings of members of both chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two chambers.

(4) Without prejudice to the powers of the Governor-General under section sixty-eight of this Act, the Governor-General may, where a Bill has been passed by both chambers of the Indian legislature, return the Bill for reconsideration by either chamber.

(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the Governor-General in Council, but may with the consent of the Governor-General be altered by the chamber to which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under this Act shall, to the extent of that repugnancy but not otherwise, be void.

(7) Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.

67A. (1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs—

(i) interest and sinking fund charges on loans ; and

(ii) expenditure of which the amount is prescribed by or under any law ; and

(iii) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; and

(iv) salaries of chief commissioners and judicial commissioners ; and

(v) expenditure classified by the order of the Governor-General in Council as—

(a) ecclesiastical';

(b) political;

(c) defence.

(4) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent, or the reduction of the amount therein referred to, by the Legislative Assembly.

(8) Notwithstanding anything in this section the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof

67 B. (1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity, or interests of British India or any part thereof, and thereupon—

(a) If the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General; and

(b) If the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General, and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent, until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council, and the notification thereof

by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian legislature and duly assented to :

Provided that where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

68. (1) When a Bill has been passed by both chambers of the Indian legislature, the Governor-General, may declare that he assents to the Bill or that he withholds assent from the Bill or that he reserves the Bill for the signification of His Majesty's pleasure thereon.

(2) A Bill passed by both Chambers of the Indian legislature shall not become an Act until the Governor-General has declared his assent thereto, or, in the case of a Bill reserved for the signification of His Majesty's pleasure, until His Majesty in Council has signified his assent and that assent has been notified by the Governor-General.

69. (1) When an Act of the Indian legislature has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty in Council to signify his disallowance of any such Act.

2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

Regulations and Ordinances.

71. (1) The local Government of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and good government of that part, with the reasons for proposing the regulation.

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration ; and when any such draft has been approved by the Governor-General in Council and assented to by the Governor-General, it shall be published in the Gazette of India and in the local official

gazette, if any, and shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the Indian legislature.

(3) The Governor-General shall send to the Secretary of State in Council an authentic copy of every regulation to which he has assented under this section.

(3A) A regulation made under this section for any territory shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

(4) The Secretary of State may, by resolution in council, apply this section to any part of British India, as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied.

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian legislature; but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian legislature to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian legislature and may be controlled or superseded by any such Act.

LOCAL LEGISLATURES.

(a) Governors' Provinces.

72A. (1) There shall be a legislative council in every governor's province, which shall consist of the members of the executive council and of the members nominated or elected as provided by this Act.

The governor shall not be a member of the legislative council, but shall have the right of addressing the council, and may for that purpose require the attendance of its members.

(2) The number of members of the governors' legislative councils shall be in accordance with the table set out in the First Schedule to this Act;

and of the members of each council not more than twenty per cent. shall be official members, and at least seventy per cent. shall be elected members :

Provided that—

(a) subject to the maintenance of the above proportions, rules under this Act may provide for increasing the number of members of any council, as specified in that schedule ; and

(b) the governor may, for the purposes of any Bill introduced or proposed to be introduced in this legislative council, nominate, in the case of Assam one person, and in the case of other provinces not more than two persons, having special knowledge or experience of the subject-matter of the Bill, and those persons shall, in relation to the Bill, have for the period for which they are nominated all the rights of the members of the council, and shall be in addition to the numbers above referred to ; and

(c) members nominated to the legislative council of the Central Provinces by the governor as the result of elections held in the Assigned Districts of Berar shall be deemed to be elected members of the legislative council of the Central Provinces.

(3) The powers of a governor's legislative council may be exercised notwithstanding any vacancy in the council.

(4) Subject as aforesaid, provision may be made by rules under this Act as to—

(a) the term of office of nominated members of governors' legislative councils, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, resignation duly accepted, or otherwise ; and

(b) the conditions under which and manner in which persons may be nominated as members of governors' legislative councils ; and

(c) the qualification of electors, the constitution of constituencies, and the method of election for governors' legislative councils, including the number of members to be elected by communal and other electorates, and any matters incidental or ancillary thereto ; and

(d) the qualifications for being and for being nominated or elected a member of any such council ; and

(e) the final decision of doubts or d the validity of any election; and

(f) the manner in which the rules are to be carried into effect:

Provided that rules as to any such matters as aforesaid may provide for delegating to the local government such power as may be specified in the rules of making subsidiary regulations affecting the same matters.

(5) Subject to any such rules any person who is a ruler or subject of any State in India may be nominated as a member of a governor's legislative council.

72B. (1) Every governor's legislative council shall continue for three years from its first meeting:

Provided that:—

(a) the council may be sooner dissolved by the governor; and

(b) the said period may be extended by the governor for a period not exceeding one year, by notification in the official gazette of the province, if in special circumstances (to be specified in the notification) he so think fit; and

(c) after the dissolution of the council the governor shall appoint a date not more than six months, or, with the sanction of the Secretary of State, not more than nine months from the date of dissolution for the next session of the council.

(2) A governor may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue the council.

(3) Any meeting of a governor's legislative council may be adjourned by the person presiding.

(4) All questions in a governor's legislative council shall be determined by a majority of votes of the members present other than the person presiding, who shall, however, have and exercise a casting vote in the case of an equality of votes.

72C. (1) There shall be a president of a governor's legislative council, who shall, until the expiration of a period of four years from the first meeting of the council as constituted under this Act, be a person appointed by the governor, and shall thereafter be a member of the council elected by the council and approved by the governor:

Provided that, if at the expiration of such period of four years the council is in session, the president then in office shall continue in office until

the end of the current session, and the first election of a president shall take place at the commencement of the next ensuing session.

(2) There shall be a deputy-president of a governor's legislative council who shall preside at meetings of the council in the absence of the president, and who shall be a member of the council elected by the council and approved by the governor.

(3) The appointed president of a council shall hold office until the date of the first election of a president by the council under this section, but he may resign office by writing under his hand addressed to the governor, or may be removed from office by order of the governor, and any vacancy occurring before the expiration of the term of office of an appointed president shall be filled by a similar appointment for the remainder of such term.

(4) An elected president and a deputy-president shall cease to hold office on ceasing to be members of the council. They may resign office by writing under their hands addressed to the governor, and may be removed from office by a vote of the council with the concurrence of the governor.

(5) The president and the deputy-president shall receive such salaries as may be determined, in the case of an appointed president, by the governor, and in the case of an elected president or deputy-president, by Act of the local legislature.

72D. (1) The provisions contained in this section shall have effect with respect to business and procedure in governors' legislative councils.

(2) The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the council in each year, and the proposals of the local government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the council in the form of demands for grants. The council may assent, or refuse its assent, to a demand, or may reduce the amount thereinreferred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed:

Provided that—

(a) the local government shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a reserved subject, and the governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject; and

(*b*) the governor shall have power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department; and

(*c*) no proposal for the appropriation of any such revenues or other moneys for any purpose shall be made except on the recommendation of the governor, communicated to the council.

(3) Nothing in the foregoing sub-section shall require proposals to be submitted to the council relating to the following heads of expenditure:—

(*i*) contributions payable by the local government to the Governor-General in Council; and

(*ii*) interest and sinking fund charges on loans; and

(*iii*) expenditure of which the amount is prescribed by or under any law; and

(*iv*) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and

(*v*) salaries of judges of the high court of the province and of the advocate-general.

(4) If any question arises whether any proposed appropriation of moneys does or does not relate to the above heads of expenditure, the decision of the governor shall be final.

(5) Where any Bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, the governor may certify that the Bill or any clause of it or, the amendment affects the safety or tranquillity of his province or any part of it or of another province, and may direct that no proceedings or no further proceedings shall be taken by the council in relation to the Bill, clause or amendment, and effect shall be given to any such direction.

(6) Provision may be made by rules under this Act for the purpose of carrying into effect the foregoing provisions of this section and for regulating the course of business in the council, and as to the persons to preside over meetings thereof in the absence of the president and deputy-president, and the preservation of order at meetings; and the rules may provide for the number of members required to constitute a quorum and for prohibiting or regulating the asking of questions on and the discussion of any subject specified in the rules.

(7) Standing orders may be made providing for the conduct of business and the procedure to be followed in the council, in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the governor in council, but may, subject to the assent of the governor, be altered by the local legislatures. Any standing order made as aforesaid, which is repugnant to the provisions of any rules made under this Act, shall, to the extent of that repugnancy but not otherwise, be void.

(8) Subject to the rules and standing orders affecting the council, there shall be freedom of speech in the governors' legislative councils. No person shall be liable to any proceedings in any court by reason of his speech or vote in any such council, or by reason of anything contained in any official report of the proceedings of any such council.

72E. (1) Where a governor's legislative council has refused leave to introduce, or has failed to pass in a form recommended by the governor, any Bill relating to a reserved subject, the governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject, and thereupon the Bill shall, notwithstanding that the council have not consented thereto, be deemed to have passed, and shall on signature by the governor become an Act of the local legislature in the form of the Bill as originally introduced or proposed to be introduced in the council or (as the case may be) in the form recommended to the council by the governor.

(2) Every such Act shall be expressed to be made by the governor, and the governor shall forthwith send an authentic copy thereof to the Governor-General, who shall reserve the Act for the signification of His Majesty's pleasure, and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the local legislature and duly assented to :

Provided that where in the opinion of the Governor-General a state of emergency exists which justifies such action, he may, instead of reserving such Act, signify his assent thereto, and thereupon the Act shall have such force and effect as aforesaid, subject however to disallowance by His Majesty in Council.

(3) An Act made under this section shall, as soon as practicable after being made, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent shall not be so presented until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat.

(b) Lieutenant-Governors' and Chief Commissioners' Provinces.

78. (1) For purposes of legislation, the council of a lieutenant-governor having an executive council, shall consist of the members of his executive council and of members nominated or elected as hereinafter provided.

(2) • • •

(3) The legislative council of a lieutenant-governor not having an executive council, or of a chief commissioner shall consist of members nominated or elected as hereinafter provided.

(4) • • •

[74 *Constitution of legislative councils in Bengal, Madras and Bombay.*—Omitted by Part II of Schedule II of 9 and 10 Geo. 5, Ch. 101.

75. *Meetings of legislative councils of Bengal, Madras and Bombay.*—Omitted by Part II of Schedule II of 9 and 10 Geo. 5, Ch. 101.]

76. (1) The number of members nominated or elected to the legislative council of a lieutenant-governor or chief commissioner, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such council, be such as may be prescribed by rules made under this section.

Provided that the number of members so nominated or elected shall not, in the case of the legislative council of a lieutenant-governor, exceed one hundred.

(2) At least one-third of the persons so nominated or elected to the legislative council of a lieutenant-governor or chief commissioner must be non-officials.

(3) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected members of any of those legislative councils, and as to the qualifications for being, and for being nominated or elected, a member of any of those councils, and as to any other matter for which rules are authorised to be made under this section, and as to the manner in which those rules are to be carried into effect.

(3a) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.

(3b) Subject to any rules made under this section, any person who is a ruler or subject of any state in India shall be eligible to be nominated a member of a legislative council.

(4) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Indian legislature or the local legislature.

77. (1) When a new lieutenant-governorship is constituted under this Act, the Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute the lieutenant-governor in legislative council of the province, as from a date specified in the notification, a local legislature for that province, and define the limits of the province for which the lieutenant-governor in legislative council is to exercise legislative powers.

(2) The Governor-General in Council may, by notification, extend the provisions of this Act relating to legislative councils of lieutenant-governors, subject to such modifications and adaptations as he may consider necessary, to any province for the time being under a chief commissioner.

78. (1) A lieutenant-governor or a chief commissioner who has a legislative council may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue the council, and any meeting of the legislative council of a lieutenant-governor or chief commissioner may be adjourned by the person presiding. Every lieutenant-governor who has no executive council, and every chief commissioner who has a legislative council, shall appoint a member of his legislative council to be vice-president thereof.

(2) In the absence of the lieutenant-governor or chief commissioner from any meeting of his legislative council the person to preside thereat shall be the vice-president of the council, or, in his absence, the member of the council who is highest in official rank among those holding office under the Crown who are present at the meeting, or, during the discussion of the annual financial statement or of any matter of general public interest, or when questions are asked the vice-president, or the member appointed to preside.

(3) All questions at a meeting of the legislative council of a lieutenant-governor or chief commissioner shall be determined by a majority of votes of the members present other than the lieutenant-governor, chief commissioner, or presiding member, who shall, however, have and exercise a casting vote in case of an equality of votes.

(4) Subject to rules affecting the council, there shall be freedom of speech in the legislative councils of lieutenant-governors and chief commis-

sioners. No person shall be liable to any proceedings in any court by reason of his speech or vote in those councils, or by reason of anything contained in any official report of the proceedings of those councils.

79. [*Powers of local legislatures.*—Omitted by Part II. of Sch. II of 9 and 10 Geo. 5 Ch. 101.

80. (1) At a meeting of a local legislative council (other than a governor's legislative council) no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business in the council, and no business shall be transacted other than the consideration of those motions or the alteration of those rules.

(2) Omitted.

(3) Notwithstanding anything in the foregoing provisions of this section, the local Government [of a province other than a governor's province] may, with the sanction of the Governor-General in Council, make rules authorising, at any meeting of the local legislative council, the discussion of the annual financial statement of the local government, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this subsection for any council may provide for the appointment of a member of the council to preside at any such discussion [or when questions are asked] in the place of the lieutenant-governor [or chief commissioner, as the case may be, and of the vice-president, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Indian legislature or the local legislature.

(4) The local government of any province (other than a governor's province) for which a local legislative council is hereafter constituted under this Act shall, before the first meeting of that council, and with the sanction of the Governor-General in Council, make rules for the conduct of legislative business in that council (including rules for prescribing the mode of promulgation and authentication of laws passed by that council.)

(5) The local legislature of any such province may, subject to the assent of the lieutenant-governor or chief commissioner, alter the rules for the conduct of legislative business in the local council (including rules prescribing the mode of promulgation and authentication of laws passed by the council), but any alteration so made may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect.

(c) General.

80A. (1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

(2) The local legislature of any province may, subject to the provisions of the sub-section next following, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

(3) The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

(a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act ; or

(b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty ; or

(c) affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces ; or

(d) affecting the relations of the government with foreign princes or states ; or

(e) regulating any central subject ; or

(f) regulating any provincial subject which has been declared by rules under this Act to be, either in whole or in part, subject to legislation by the Indian legislature, in respect of any matter to which such declaration applies ; or

(g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force ; or

(h) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919, by any authority in British India other than that local legislature, is declared by rules under this Act to be a law which cannot be repealed or altered by the local legislature without previous sanction ; or

sioners. No person shall be liable to any proceedings in any court by reason of his speech or vote in those councils, or by reason of anything contained in any official report of the proceedings of those councils.

79. [*Powers of local legislatures.*—Omitted by Part II. of Sch. II of 9 and 10 Geo. 5 Ch. 101.

80. (1) At a meeting of a local legislative council (other than a governor's legislative council) no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business in the council, and no business shall be transacted other than the consideration of those motions or the alteration of those rules.

(2) Omitted.

(3) Notwithstanding anything in the foregoing provisions of this section, the local Government [of a province other than a governor's province] may, with the sanction of the Governor-General in Council, make rules authorising, at any meeting of the local legislative council, the discussion of the annual financial statement of the local government, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this subsection for any council may provide for the appointment of a member of the council to preside at any such discussion [or when questions are asked] in the place of the lieutenant-governor [or chief commissioner, as the case may be, and of the vice-president, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Indian legislature or the local legislature.

(4) The local government of any province (other than a governor's province) for which a local legislative council is hereafter constituted under this Act shall, before the first meeting of that council, and with the sanction of the Governor-General in Council, make rules for the conduct of legislative business in that council (including rules for prescribing the mode of promulgation and authentication of laws passed by that council.)

(5) The local legislature of any such province may, subject to the assent of the lieutenant-governor or chief commissioner, alter the rules for the conduct of legislative business in the local council (including rules prescribing the mode of promulgation and authentication of laws passed by the council), but any alteration so made may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect.

(c) General.

80A. (1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

(2) The local legislature of any province may, subject to the provisions of the sub-section next following, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

(3) The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

(a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act; or

(b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty; or

(c) affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces; or

(d) affecting the relations of the government with foreign princes or states; or

(e) regulating any central subject; or

(f) regulating any provincial subject which has been declared by rules under this Act to be, either in whole or in part, subject to legislation by the Indian legislature, in respect of any matter to which such declaration applies; or

(g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force; or

(h) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919, by any authority in British India other than that local legislature, is declared by rules under this Act to be a law which cannot be repealed or altered by the local legislature without previous sanction; or

(i) altering or repealing any provision of an Act of the Indian legislature made after the commencement of the Government of India Act, 1919, which by the provisions of such first-mentioned Act may not be repealed or altered by the local legislature without previous sanction :

Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament.

80B. An official shall not be qualified for election as a member of a local legislative council, and if any non-official member of a local legislative council, whether elected or nominated, accepts any office in the service of the Crown in India, his seat on the council shall become vacant :

Provided that for the purposes of this provision a minister shall not be deemed to be an official and a person shall not be deemed to accept office on appointment as a minister.

80C. It shall not be lawful for any member of any local legislative council to introduce, without the previous sanction of the governor, lieutenant-governor or chief commissioner, any measure affecting the public revenues of a province, or imposing any charge on those revenues.

81 (1) When a Bill has been passed by a local legislative council, the governor, lieutenant-governor or chief commissioner, may declare that he assents to or withholds his assent from the Bill.

(2) If the governor, lieutenant-governor or chief commissioner withholds his assent from any such Bill, the Bill shall not become an Act.

(3) If the governor, lieutenant-governor or chief commissioner assents to any such Bill, he shall forthwith send an authentic copy of the Act to the Governor General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by the governor, lieutenant-governor or chief commissioner.

(4) Where the Governor-General withholds his assent from any such Act, he shall signify to the governor, lieutenant-governor or chief commissioner in writing his reason for so withholding his assent.

81A (1) Where a Bill has been passed by a local legislative council, the governor, lieutenant-governor or chief commissioner may, instead of declaring

that he assents to or withholds his assent from the Bill, return the Bill to the council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under this Act, may, and if the rules so require, shall, reserve the Bill for the consideration of the Governor-General.

(2) Where a Bill is reserved for the consideration of the Governor-General, the following provisions shall apply :—

(a) The governor, lieutenant-governor or chief commissioner may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor-General, return the Bill for further consideration by the council with a recommendation that the council shall consider amendments thereto :

(b) After any Bill so returned has been further considered by the council, together with any recommendations made by the governor, lieutenant-governor or chief commissioner relating thereto, the Bill, if re-affirmed with or without amendment, may be again presented to the governor, lieutenant-governor or chief commissioner :

(c) Any Bill reserved for the consideration of the Governor-General shall, if assented to by the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, in the same way as a Bill assented to by the governor, lieutenant-governor or chief commissioner, but if not assented to by the Governor-General within such period of six months, shall lapse and be of no effect unless before the expiration of that period either—

(i) the Bill has been returned by the governor, lieutenant-governor or chief commissioner for further consideration by the council ; or

(ii) in the case of the council not being in session, a notification has been published of an intention so to return the Bill at the commencement of the next session.

(3) The Governor-General may (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor-General.

82. (1) When an Act has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty in Council to signify his disallowance of the Act.

(2) Where the disallowance of an Act has been so signified, the governor, lieutenant-governor or chief commissioner shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

83. [*Rules for conduct of legislative business.*]—Omitted.

Validity of Indian Laws.

84. (1) A law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons :—

(*a*) in the case of an Act of the Indian legislature or a local legislature, because it affects the prerogative of the Crown ; or

(*b*) in the case of any law, because the requisite proportion of non-official members was not complete at the date of its introduction into the council or its enactment ; or

(*c*) in the case of an Act of a local legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature, by Acts duly made, could lawfully confer on magistrates in the exercise of authority over other British subjects in the like cases.

A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void.

(2) Nothing in the Government of India Act, 1919, or this Act, or in any rule made thereunder, shall be construed as diminishing in any respect the powers of the Indian legislature as laid down in section sixty-five of this Act, and the validity of any Act of the Indian legislature or any local legislature shall not be open to question in any legal proceedings on the ground that the Act affects a provincial subject, or a central subject, as the case may be, and the validity of any Act made by the governor of a province shall not be so open to question on the ground that it does not relate to a reserved subject.

PART VI A.

Statutory Commission.

84A (1) At the expiration of ten years after the passing of the Government of India Act, 1919, the Secretary of State with the concurrence of both Houses of Parliament shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government, then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable.

(3) The Commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.

COMMENTS.

Ss. 63 84 (both inclusive).

Below is given a general description and criticism of the constitution and powers of the Indian Legislatures, both Imperial and Provincial. Here we append some remarks on the extent of the law-making powers of the Indian Leislative Councils.

The law-making powers of the Indian legislatures, as laid down in s. 65 of the present Act, (and s. 79 for the local councils) are not exhaustive. Under various Acts of Parliament the Indian councils, like other British legislatures with limited powers, have power to make laws on specified subjects with

more extensive operation than laws made under its ordinary power. Thus the Extradition Act of 1870, the Slave Trade Act of 1876, the Fugitive Offenders Act of 1881, the Colonial Courts of Admiralty Act of 1890, the Colonial Probates Act of 1892, and the Merchant Shipping Act of 1894, have each given wider powers than are contained in the provisions of this Act.

As regards the general powers of the Indian legislatures, the leading case is that of *Queen vs. Burah (1878, L.R. 3, App. Cas. 889).* In that case an act of the Indian legislature, (XII of 1869) was questioned. By that act the Garo Hills were removed from the jurisdiction of the ordinary civil and criminal courts, and the administration of civil and criminal justice in those territories was vested in officers appointed by the Lieutenant-Governor of Bengal. By s. 9 of that Act the Lieutenant-Governor was authorised to extend the operation of the Act to any of the adjoining mountains. The Privy Council maintained the validity of the Act as well as that of the ninth section. It was held that (1) the Act was not inconsistent with the Indian High Court; (2) it was in its general scope within the powers of the Governor-General in Council; (3) s. 9 was conditional legislation and not a delegation of legislative authority ; and (4) where plenary powers of legislation exist as to particular objects, they may be well exercised either absolutely or conditionally. In delivering the judgment of the Privy Council in this case Lord Selborne said :—

> "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. *But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself.* The established courts of justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that ques-